IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

RAJENDRA PRASAD V. THE STATE OF RAJASTHAN & ANOTHER.

D. B. CRIMINAL APPEAL NO. 313/2002.

Under Section 374 (2), Cr.P.C., against the Judgment dated 23-03-2002, passed by the learned Additional Sessions Judge, Sri Karanpur, District – Sri Ganganagar in Sessions Case No.3/97 (25/92)

DATE OF JUDGMENT :::: 03-08-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. Mahesh Bora, for Appellant (s).
Mr. J.P.S.Choudhary, Public Prosecutor.
Mr. Mridul Jain, for Complainant.

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

The present appeal is preferred by accused Rajendra Prasad S/o. Harish Chand and Pradeep Kumar @ Deepa S/o.

Ved Prakash against the judgment of the learned Additional Sessions Judge, Sri Karanpur, District – Sri Ganganagar dated 23.03.2002 in Sessions Case No.3/97 (25/92).

The case set out by the prosecution is that on 26.12.1991, at about 6.00 p.m., Gopi Raj S/o. Sohan Lal Vishnoi lodged a First Information Report in Police Station, Sri Karanpur. It was stated by the complainant Gopi Ram that Dharmpal Soni and Ved Prakash Soni came to his residence and informed that accused Rajendra Prasad s/o. Harish chand Soni has killed Gurmel Singh Soni r/o. Dhabwali and his body was placed in the residential compound of Chintram Rajput.

The FIR was registered under Section 302/34 of IPC bearing FIR No.250. The investigation was thereafter conducted and charge sheet was filed in the Court of Munsif & Judicial Magistrate, Sri Karanpur against Rajendra Prasad, Pradeep Kumar @ Deepa and Kala @ Chandra Prakash under Sections 302, 397, 201 and 120-B of IPC. The case was committed to the Court of Additional Sessions Judge, Sri Karanpur, District – Sri Ganganagar. The Additional Public Prosecutor moved an application under Section 319, Cr.P.C., the trial Court passed order on 26.08.1993, taking cognizance against Smt.Kaushalya and Smt. Parvati under Sections 176 and 201, IPC.

The trial Court framed charges against Rajendra Prasad, Pradeep Kumar @ Deepa and Chandra Prakash @ Kala under

Sections 120B, 397, 347, 302/34 and 201, IPC. Charges against Smt. Kaushalya Devi and Smt. Parvati Devi were framed under Sections 176 and 201, IPC, by a separate order. Appellants accused denied the charges and claimed trial.

During trial, 16 witnesses were examined and 130 documents were exhibited from the prosecution side. The statements of the accused were recorded under Section 313, Cr.P.C. Three witnesses were produced from defense side.

The trial Court convicted and sentenced accused Rajendra Prasad and Pradeep Kumar under Sections 302/34, IPC, to life imprisonment and a fine of Rs.1,000/-, in default of payment of fine to further undergo six months imprisonment; under Section 347, IPC, three years' imprisonment and a fine of Rs.5,00/-, in default of payment of fine to further undergo three months' imprisonment; under Section 397, IPC, seven years' rigorous imprisonment; under Section 201, IPC, seven years' rigorous imprisonment and a fine of Rs.500/-, in default of payment of fine to further undergo three months imprisonment and under Section 120-B, IPC, life imprisonment and a fine of Rs.1,000/-, in default of payment of fine to further undergo six months imprisonment.All the sentences were directed to run concurrently.

Learned counsel for the appellants urged that the FIR was wrongly registered against the accused appellants, as they were

not involved in the case. It was submitted that FIR was lodged by Gopi Ram Vishnoi advocate, though Dharmpal Soni and Vedprakash Soni had reported the incident to Gopiram hence submission of FIR by Gopiram advocate instead Dharmpal Soni and Ved Prakash itself is sufficient to demolish the case of the prosecution. The learned counsel for the appellants further argued that so far as accused Pradeep Kumar is concerned, no circumstantial evidence exists against him. Thus, he is wrongly being convicted. To substantiate his argument, learned counsel for the appellants referred material available to show that no circumstantial evidence exists against the accused Pradeep Kumar.

Per contra, learned Public Prosecutor submitted that both the accused were convicted, based on strong circumstantial evidence, therefore, filing of FIR by Gopiram Vishnoi advocate cannot demolish prosecution case. It was submitted that Pradeep Kumar was also involved in the matter as his blood stained clothes were recovered from the residence of accused Rajendra Prasad. Thus, learned Public Prosecutor supported the judgment of the learned trial Court.

We first take up the case of accused Rajendra Prasad. Trial Court has considered statements of witnesses as well as documents produced on record. PW 14 Surendra Singh stated that his father deceased Gurmel Singh went to Sri Ganganagar

on 23-12-91. Deceased was carrying 8 Kg. Silver ornaments and 250 gms. Gold ornaments. On 27.12.91, he received information at 6 a.m. about murder of his father. PW 6 Raghunath stated that deceased Gurmel Singh visited his shop a day early to the date of his murder. Deceased was carrying gold and silver ornaments in his attache case. He has purchased silver ornaments worth of Rs.1500/-. Deceased Gurmel Singh thereafter visited shop of Harish Chandra, who is father of accused Rajendra Prasad. PW 10 Dr.Jaswant Singh stated that deceased sustained 9 injuries, out of which four injuries were fatal in nature. Those injuries were sufficient to cause death. The injuries were caused by "Kundala". It was also observed that deceased sustained injuries from sharp weapon also.

PW 13 Ajaib Singh stated that on 31.12.91, articles were recovered from the residence of Rajendra Prasad at the instance of accused Rajendra Prasad himself in his presence. Recovery of articles includes gold and silver ornaments and Ex.P-115 regarding recoveries were prepared. PW 17 Kashi Raj stated that on the receipt of the written complaint of Gopi Ram on 26.12.91, he had visited the site. Chintram's house was found locked which was opened with the help of Dharmveer. Wooden stair-case, a old bamboo, a cot, a brick, curtain of bed room and quilt on the bed were found blood stained and thus recovered. The said witness further stated that blood was found on the roof,

stair-case, wash basin, in bed room, on the wall, door, and 'fars' of bed room of the accused, samples of which were taken. It was further stated that attache case of deceased and gold and silver ornaments were recovered from the residence of accused Rajendra Prasad. Blood stained clothes were also recovered, apart from recovery of Rs.14,900/- belonging to the deceased.

In the statement under Section 313 of Cr.P.C., accused Rajendra Prasad stated that on 20.12.91, at about 9.00 p.m., he was alone at his residence as his wife gave birth to a baby girl at Hanumangarh, almost six days back. It was further stated that his all other relatives had also gone to Hanumangarh. Deceased Gurmel Singh came on the Rickshaw of Rameshia, having a suitcase with him. Said deceased stated that he is going with Rameshia and would return after some time. At about 10.30 or 11.00 p.m., on call when he opened the door, deceased Gurmel Singh entered in his bed room shouting "save me – save me". It was further stated that many persons were following Gurmel Singh and when he stopped them, those persons fought with him causing injuries. It was lastly stated that when he had gone inside, Gurmel Singh was missing.

The trial Court has considered the statements of all the witnesses and referred exhibits produced by the prosecution. It is based on chain of events connecting accused Rajendra Prasad

with the crime, findings were recorded. If the events are arranged in series, then it will show that deceased visited Sri Ganganagar having silver and gold ornaments along with cash amount. Deceased visited shop of accused's father a day before when accused was present. In the statement under Section 313, accused Rajendra Prasad admitted that deceased entered in his house at about 10.30 – 11.00 p.m. On the day of the occurrence, thus he has admitted presence of deceased on the scene of occurrence. The Police, during the course of investigation, found blood stained clothes, quilt, bamboos, wooden stair-case, door of the bed room, floor of the bed room, a cot and brick of wall from where deceased was thrown in the compound of Chintaram. Gold and silver articles along with cash of Rs.14,900/- were recovered from the residence of accused Rajendra Prasad. The trial Court even examined the statement of accused, so recorded under Section 313 and found that the plea taken by the accused is false. It was considered that if many persons caused injuries to the deceased before he entered in the house of accused Rajendra Prasad and those persons were still following him, then one person alone, i.e., accused could not have stopped them, more so, accused further stated that those persons caused injuries to him also. The second aspect considered was that as to why accused had not reported this incident to the police and kept silence, more so, when the house

was found blood stained at many places. Looking to the material available on record, learned trial Court found that circumstantial evidence exist to prove prosecution case beyond reasonable doubt.

Learned counsel for the appellants submitted that FIR was lodged at the instance of Gopi Ram Vishnoi, advocate, and not by two informers Dharmpal Soni and Vedprakash Soni. Thus, it was submitted that the prosecution case cannot sustain in those circumstances as First Information Report was required to be lodged by the informer and not by an advocate. We are not convinced with the argument of the learned counsel for the appellants as the prosecution case cannot be demolished only on the ground that the FIR was not lodged by informer, but was lodged by an advocate. There exists no bar to lodge First Information Report by an advocate. In fact, First Information Report itself is not a proof of guilt of any person, but the same remains subject of investigation and further adjudicated by competent court to arrive at conclusions regarding guilt or innocence of the accused. In the present matter, trial Court has gone through complete circumstantial evidence available on record and it is thereupon only that it arrived at the conclusions of the guilt of the accused Rajendra Prasad. We find that prosecution could prove its case beyond reasonable doubt. The

chain of events proves involvement of accused Rajendra Prasad beyond reasonable doubt. Hence the judgment of the trial Court calls for no interference so far as the case of accused Rajendra Prasad is concerned.

So far as the case of accused Pradeep Kumar is concerned, the main argument is that without there being sufficient and convincing circumstantial evidence, accused is being punished. Learned counsel for the accused Pradeep Kumar urged that other than recovery of blood stained "Payjama & Baniyan", there is nothing on record to connect accused Pradeep Kumar with the incident. It was further urged that even those clothes were not produced before the trial Court. Learned counsel for the appellant referred to the judgment of the Hon'ble Supreme Court, reported in (2007) 4 SCC 713 (Shivu v. Registrar General, High Court of Karnataka), the Hon'ble Supreme Court held thus :-

> **"12.** It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan,

> (1977) 2 SCC 99; Eradu v. State of Hyderabad, AIR 1956 SC 316; Earabhadrappa v. State of Karnataka, (1983) 2 SCC 330; State of U.P. v. Sukhbasi, 1985 Supp. SCC 79; Balwinder Singh v. State of Punjab, (1987) 1 SCC 1 and Ashok Kumar Chatterjee v. State of M.P., 1989 Supp. (1) SCC 560) The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bharat Ram v. State of Punjab (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt."

The submission of the learned counsel is that findings in regard to accused Pradeep Kumar are based on inferences. The trial Court drawn its conclusion against Pradeep Kumar only on the ground that deceased Gurmel Singh was murdered by more than one person. Hence, based on such inference, accused Pradep Kumar was held guilty. Thus, according to the learned counsel for the appellant Pradeep Kumar, without there being corroborating evidence and circumstances, accused has been

convicted and sentenced for life imprisonment.

We have carefully examined the case of accused Pradeep Kumar and find that the trial Court drawn its conclusion only on one circumstantial evidence. Recovery of blood stained clothes of accused Pradeep Kumar from the place of Rajendra Prasad is the main basis for holding Pradeep Kumar as guilty. The learned trial Court failed to consider that neither the presence of Pradeep Kumar at the scene of occurrence is established, nor there exists any other evidence so as to draw reasonable conclusions of his guilt. We are convinced with the argument of the learned counsel for the appellant Pradeep Kumar that the trial Court has drawn inferences against Pradeep Kumar and it is based on such inferences that Pradeep Kumar was held guilty. It is settled proposition that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. The circumstances from which an inference of guilt of accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In the present matter, neither Pradeep Kumar could be connected with the occurrence, nor there exists circumstantial evidence which can prove guilt beyond reasonable doubt. In view of the fact, we acquit accused

Pradeep Kumar and thereby order of conviction and sentence passed against him is set aside. Since Pradeep Kumar was released on bail vide order dated 26.4.2002, his personal bond and two sureties are ordered to be released.

We accordingly dismiss the appeal filed by accused Rajendra Prasad. Appeal preferred by Pradeep Kumar is accepted, the order of conviction and sentence passed against Pradeep Kumar is set aside. Since Pradeep Kumar is already released on bail, his personal bond and sureties be released.

(MUNISHWARNATH BHANDARI),J.(BHAGWATI PRASAD),J

scd.